



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Authorization of a Memorandum of Understanding with Michael/David Winery and Jesse's Grove Winery to Truck Industrial Effluent to the Lodi Industrial Wastewater Treatment Plant in Exchange for Charging the Established Industrial Rate Plus a 50% Surcharge and Opening a Joint Downtown Wine Tasting Room.

**MEETING DATE:** March 15, 2006

**PREPARED BY:** City Manager

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**RECOMMENDED ACTION:** Authorize the City Manager to execute a Memorandum of Understanding with Michael/David Winery and Jesse's Grove Winery to receive trucked industrial effluent at the established industrial rate charge, plus a 50% surcharge, and the requirement to open a joint downtown wine tasting room.

**SUMMARY:** Several years ago, the City Council voted to allow wineries to truck winery waste and deposit it into Lodi's domestic wastewater treatment system. Last June, as an incentive to attract a wine tasting room downtown, the City Council voted to allow Van Ruiten Winery to connect to the City's industrial wastewater treatment system. Very few deliveries, less than five, of trucked winery waste have been made to the City's domestic wastewater treatment system. The cost of treatment in the City's domestic wastewater system is prohibitive. It is cheaper to bypass Lodi and haul wastewater to the East Bay Municipal Utilities District plant near the Oakland Bay Bridge. Two smaller family wineries, Michael/David and Jesse's Grove, are requesting that they be allowed to bring trucked waste to the industrial wastewater treatment system and pay the same costs as Van Ruiten Winery. Also, Michael/David and Jesse's Grove have asked to establish a joint tasting room downtown along with Van Ruiten. In meetings with the City Manager and other City staff, the wineries have put forth a convincing argument that the quality of a wine tasting room and the chances of success would be higher if the three wineries could pool their resources in a downtown tasting room.

**BACKGROUND INFORMATION:** On June 5, 2002, the City Council authorized the Public Works Director to accept winery effluent at the White Slough Wastewater Pollution Control Facility as domestic waste. On June 15, 2005, the City Council approved an agreement with Van Ruiten Family Winery which allowed Van Ruiten to connect to the City's industrial wastewater treatment system in exchange for paying the industrial wastewater rates plus a surcharge of 50%, and the requirement to open a 500 square foot wine tasting room in downtown Lodi. The action was taken in order to advance the General Plan goals of promoting agricultural uses of the land outside the City and revitalizing downtown. Now, staff is recommending that the Council allow two wineries, Michael/David and Jesse's Grove Winery, to truck waste and discharge to the City's industrial wastewater system, charge the same rate as the Van Ruiten Family Winery is being charged, and open a minimum 2,000 square foot joint tasting room that would be shared by Michael/David, Jesse's Grove, and Van Ruiten Family Wineries.

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APPROVED:

A handwritten signature in blue ink, appearing to read "Blair King".  
Blair King, City Manager

Staffs recommendation is based on the following points and observations:

- Lodi treats domestic and industrial waste separately. The industrial waste, which consists of primarily of cannery waste, is cheaper to treat. Limited amounts of winery waste can be accommodated in the industrial waste treatment system. The amount requested by Michael/David and Jesse's Grove is less than one percent of the annual industrial system flow. The proposal contemplates that all capacity and industrial treatment costs, plus an additional 50% surcharge, will be paid by the wineries.
- The City Council's action in 2002 allowed wineries to truck waste to the City's domestic system, but did not seek to leverage the City's domestic waste system for any other economic development goal.
- The Gruen and Gruen Downtown Strategy adopted in 1998 recommends bringing wine related programs and food service downtown. (Gruen+Gruen Associates, January 1998, p. xii) Freedman Tung & Bottomley recommended that incentive and financing programs be used to incentive businesses to locate downtown. (Central City Revitalization Program, p. 9)
- The wineries collectively have presented a business plan to the City Manager that provide for an approximately 2,000 square foot wine tasting room that would highlight the following features; these features and the size of the facility could not be accomplished without the collective pooling of financial resources:
  - Tenant improvements in a downtown retail location;
  - Extended hours of operation - Sunday, Tuesday, and Wednesday from 11:00 to 5:00 and Thursday, Friday and Saturday from 11:00 to 8:00;
  - A demonstration kitchen for special events;
  - A conference room/wine library for meetings and educational seminars that would be also available for business meetings;
  - Inside and outside seasonal seating for patrons; and
  - Extensive non-wine related merchandise.

The total number of wineries participating in this joint tasting room would be limited to five family-owned wineries. It is anticipated that only the three referenced wineries will request wastewater treatment services.

The wineries have made the request to pool financial resources in order to reduce the element of risk and increase the probability of success. They point out that the proposal for downtown wine tasting has not been tested in Lodi and the market is not yet known. The wineries anticipate a net operating loss based upon the tasting room alone.

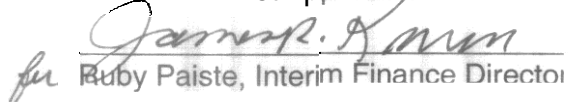
It is still the hope and goal of staff that tasting rooms downtown will prove successful and other wineries will follow without the need of incentives. These tasting rooms will serve as a catalyst for other economic activity, such as restaurants and art galleries. However, if the first venture is not successful, staff is fearful that other wineries will not want to invest in downtown tasting rooms. Downtown tasting rooms are not consistent with the "country experience" many wineries seek to cultivate. As such, staff strongly supports the concept of making this first tasting room as robust as possible.

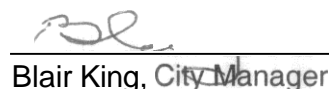
If the Council should approve the agreements, the tasting room must be established and open for business before delivery of trucked effluent. By comparison, the Van Ruiten agreement requires the tasting room open within 12 months of connection (November 2005) and allows an in-lieu payment for a six-year period if the tasting room is not opened.

The proposed Memorandums of Understanding are attached.

**FISCAL IMPACT:** The wineries will pay a proposed combined capacity fee of \$23,290. The annual combined sewer charges will be approximately \$5,158, of which approximately half (50%) will be a payment to the General Fund. It is expected that the City will realize approximately \$1,000 in additional sales tax from the sale of non-wine merchandise. However, the real financial benefit is the destination draw that the wine tasting room will create for downtown.

**FUNDING:** Not Applicable

  
Ruby Paiste, Interim Finance Director

  
Blair King, City Manager

Attachments

**Jesse's Grove Winery  
Industrial Waste Connection Memorandum of Understanding**

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2006, (the "Effective Date"), between JESSE'S GROVE WINERY, LLC ("Winery") and the CITY OF LODI, a municipal corporation organized and existing under the laws of the State of California ("City").

**RECITALS**

This Agreement is predicated upon the following findings:

A. Winery is the owner of a Wine Production Facility located at 1973 West Turner Road, San Joaquin County, California which is outside the corporate limits of the City of Lodi. Winery intends to submit an application to truck in their Industrial effluent to the City's Industrial Wastewater Treatment Plant. ("Project").

B. As more fully detailed in Ordinance No. 1764, the City, through its general plan is committed to encouraging agricultural uses in the area surrounding the City and discouraging urban uses. Providing industrial sewer service to wineries encourages agricultural uses by making them more economical.

**NOW THEREFORE**, the parties agree as follows:

1. Definitions. Unless otherwise defined in this agreement, all capitalized terms will have the definitions ascribed to them in Lodi Municipal Code Section 13.12.020.
  - a. "Downtown Lodi" means the area bordered by Church Street, Lodi Avenue, Union Pacific Railroad and Lockeford Street.
2. Terms of Connection. Any delivery of trucked effluent permitted pursuant to the Agreement shall be subject to the following minimum terms:
  - a. Permit: Winery shall comply with the terms of the Industrial System Discharge Permit to be issued by the City which will include but not be limited to limitations on maximum flow, BOD, ph, TDS and suspended solid concentrations and prohibitions on discharge of hazardous waste in conformance with the City's NPDES Permit. Winery will only be allowed to dispose of Industrial Waste water. No sanitary waste will be delivered to the City's Industrial Waste Water Treatment Plant.
  - b. Volume: The volume of effluent shall not exceed 500,000 gallons per year and 375,000 gallons between September 1 and May 31, unless otherwise approved by the Public Works Director pursuant to LMC 13.12.200 et seq..

- c. Rate/Surcharge: Winery's charge for trucked effluent will be as established by the City for Industrial Waste system customers plus a 50% surcharge at the current rates. Current annual charge based on 500,000 gallons with a BOD of 8,170 mg/L is \$2,150.00 including the surcharge.
  - d. Capacity Charge: Winery shall pay a one-time capacity charge of \$9,721.00 upon delivery of first load of trucked effluent. Additional one time capacity charges at the current City rates will apply for each increment of effluent over 500,000 gallons.
  - e. Downtown Tasting Room: Winery shall open and operate a tasting room in Downtown Lodi during the entire term of its trucked effluent disposal agreement with the City. The tasting room shall be operated within the following minimum requirements:
    - i) The wine tasting room must be established and open for business before delivery of trucked effluent.
    - ii) The tasting room shall be at least 500 square feet and have wine available for tasting and sale, wine related merchandise for sale and be open a minimum of 40 hours per week, including Saturday and Sunday.
    - iii) If Downtown Tasting Room closes, this Agreement will terminate and the City will not consider a new agreement to treat winery's effluent for 12 months from the closure date.
  - f. The agreement cannot be assigned and is only for the use of the Winery.
3. Binding Effect of Agreement. Winery's obligations under paragraph two of this Agreement will only be triggered if all approvals necessary to secure that the trucked effluent disposal agreement is secured.
4. Reimbursement. Winery shall reimburse the City for all costs incurred by the City in connection with the Project. The City will provide Winery with an estimate of these costs in advance of delivery of trucked effluent. Winery shall deposit the estimate with the City within 30 days of receiving the estimate. City will bill all costs against the deposit. In the event the deposit is exceeded, Winery shall pay the difference to the City within 30 days of notice. Any excess will be refunded to Winery within 30 days.
5. Delivery. Winery shall be solely responsible for delivering the trucked effluent to Lodi's Industrial Waste Water Treatment Plant.
6. Relationship of Parties.
- a. It is understood that the contractual relationship between the City and Winery is such that Winery is an independent contractor and not the agent of the City; and nothing herein shall be construed to the contrary.

- b. City and Winery agree that nothing contained herein or in any document executed in connection herewith shall be construed as making Winery and City joint venturers or partners.
  - c. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.
- 7. No Entitlements Granted. Nothing in this Agreement shall provide Winery with any right to secure approval of any connection or other entitlement. In addition, Winery agrees that it will have no rights to: select the Environmental Review Consultant, if one is required; or direct the work, response times, recommendations or approvals of the Consultant.
- 8. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the City and Winery and its representative and Winery's successors and assigns. Notice shall be effective on the date it is delivered in person, or the date when the postal authorities indicate the mailing was delivered to the address of the receiving party indicated below:

**Notice to City:** City of Lodi  
City Manager  
221 W. Pine Street  
Lodi, CA 95240

**Notice to Winery:** Jesse's Grove Winery, LLC  
1973 West Turner Road  
Lodi, CA 95242

- 9. Indemnification, Defense and Hold Harmless.
  - a. Winery agrees to and shall indemnify, defend and hold the City, its council members, officers, agents, employees and representatives harmless from liability for damage or claims of damage, for personal injury, including death, and claims for property damage which may arise from this agreement.
  - b. Winery's obligation under this section to indemnify, defend and hold harmless the City, its council members, officers, agents employees, and representatives shall not extend to liability for damage or claims for damage arising out of the sole negligence or willful act of the City, its council members, officers, agents, employees or representatives. In addition, Winery's obligation shall not extend to any award of punitive damages against the City resulting from the conduct of the City, its council members, officers, agents, employees or representatives.

- c. With respect to any action challenging the validity of this Agreement or any environmental, financial or other documentation related to approval of this Agreement, Winery further agrees to defend, indemnify, hold harmless, pay all damages, costs and fees, if any incurred to either the City or plaintiff (s) filing such an action should a court award plaintiff(s) damages, costs and fees, and to provide a defense for the City in any such action.

**IN WITNESS WHEREOF** this Agreement has been executed by the parties on the day and year first above written.

CITY OF LODI, a municipal corporation

JESSE'S GROVE WINERY, LLC

\_\_\_\_\_  
BLAIR KING  
City Manager

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
SUSAN J. BLACKSTON  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
D. STEPHEN SCHWABAUER  
City Attorney

**Michael/David Winery**  
**Industrial Waste Connection Memorandum of Understanding**

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2006, (the "Effective Date"), between MICHAEL/DAVID WINERY, LLC ("Winery") and the CITY OF LODI, a municipal corporation organized and existing under the laws of the State of California ("City").

**RECITALS**

This Agreement is predicated upon the following findings:

A. Winery is the owner of a Wine Production Facility located at 4580 W. Highway 12, San Joaquin County, California which is outside the corporate limits of the City of Lodi. Winery intends to submit an application to truck in their Industrial effluent to the City's Industrial Waste Water Treatment Plant. ("Project")

B. As more fully detailed in Ordinance No. 1764, the City, through its general plan is committed to encouraging agricultural uses in the area surrounding the City and discouraging urban uses. Providing industrial sewer service to wineries encourages agricultural uses by making them more economical.

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  - b. Volume: The volume of trucked effluent shall not exceed 700,000 gallons per year and 525,000 gallons between September 1 and May 31, unless otherwise approved by the Public Works Director pursuant to Lodi Municipal Code 13.12.200 et seq..
  - c. Rate/Surcharge: Winery's charge for trucked effluent will be as established by the City for Industrial Waste system customers plus a 50%

surcharge at the current rates. Current annual charge based on 700,000 gallons with a BOD of 8,170 mg/L is \$3,008.00 including the surcharge.

- d. Capacity Charge: Winery shall pay a one-time capacity charge of \$13,569.00 upon delivery of the first load of trucked effluent. Additional one time capacity charges at the current City rates will apply for each increment of effluent over 700,000 gallons.
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City Manager

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Its: \_\_\_\_\_

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